

Notice of Allowability

Application No.

09/916,609

Examiner

Todd Ingberg

Applicant(s)

MCEWAN, WILLIAM ALEXANDER

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/17/2006.
2. ☒ The allowed claim(s) is/are 1-25 and 27-35.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 2/1/07.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


TODD INGBERG
PRIMARY EXAMINER

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The title of the application has been amended as follows:

**SECURITY AND SOFTWARE TESTING OF PRE-RELEASE ANTI-VIRUS
UPDATES ON CLIENT AND TRANSMITTING THE RESULTS TO THE
SERVER**

The following amendment was authorization for this examiner's amendment in a telephone interview with Kevin Zilka on February 1, 2007.

27. (Currently Amended) A computer program product for testing scanner updates, comprising:
- (a) computer code for distributing a full-release scanner update from a server to a plurality of computers utilizing a network;
 - (b) computer code for distributing a pre-release scanner update from the server to the computers utilizing the network;
 - (c) computer code for executing the full-release scanner update on the computers for security scanning;
 - (d) computer code for executing the pre-release scanner update on the computers for testing purposes; and
 - (e) computer code for transmitting results of the testing from the computers to the server utilizing the network;
 - (f) wherein a result of code execution is stored on a computer readable medium.

28. (Currently Amended) A system for testing scanner updates, comprising:
- (a) logic for distributing a full-release scanner update from a server to a plurality of computers utilizing a network;
 - (b) logic for distributing a pre-release scanner update from the server to the computers utilizing the network;
 - (c) logic for executing the full-release scanner update on the computers for security scanning;
 - (d) logic for executing the pre-release scanner update on the computers for testing purposes; and
 - (e) logic for transmitting results of the testing from the computers to the server utilizing the network;
 - (f) wherein a result of system execution is stored on a computer readable medium.

REASONS FOR ALLOWANCE

2. The following is an examiner's statement of reasons for allowance:

Independent claim 1 is representative of independent claims 1, 27 and 28. And independent claims 29 and 30 and 31.

The claimed invention is for testing scanner updates.

The basic steps of the operation are as follows:

(a) distributing a full-release scanner update from a server to a plurality of computers utilizing a network;

Initial Examiner Interpretation to be met by the first time a user downloads scanner updates they get the full version.

(b) distributing a pre-release scanner update from the server to the computers utilizing the network;

Initial Examiner Interpretation scanner updates after alpha testing (in-house testing) are distributed.

(c) executing the full-release scanner update on the computers for security scanning;

Initial Examiner Interpretation – One of the types of testing is security scanning.

(d) executing the pre-release scanner update on the computers for testing purposes; and

Initial Examiner Interpretation – One of the types of testing is beta (on site testing).

(e) transmitting results of the testing from the computers to the server utilizing the network.

Initial Examiner Interpretation – results of both types of testing are transmitted back to server.

The Examiner asserted that Norton Antivirus Corporate edition meets limitations a-d by providing the following.

(a) Download for first time users.

(b) Distributing pre-release updates based on submission of quarantine files. Result can be emailed which is a form of distribution.

(c) (d) Performing different types of Testing. The fact that the Norton supports the ability to interact with SARC meets the limitations.

c. Security – If the update fails the file will be quarantined.

d. If the program code has an error the user can email the Corporation.

e. Applicant's limitation that the results from the testing. Which is both types of testing are transmitted together back to the server.

Applicant is presumed to be a Person Having Ordinary Skill in the art and presumed to be aware of all the pertinent prior art. *Customer Accessories Inc. v. Jeffrey-Allen Ind. Inc.*, 1 USPQ24 1196 (Fed Cir 1986). Applicant's arguments for patentability found on pages 1 – 5 of Applicant's December 15, 2005 response include knowledge of Symantec Corporations product Norton Corporate Edition. On the bottom of page one Applicant's states "... Norton only teaches

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updates that include update definitions that are downloaded and installed on user computers for use in security scanning.”

The limitation of pre-release scanner updates was rejected by the ability for Norton to respond to submissions of files and email (distribute) a fix. Applicant's response on pre-release scanner updates is found on page 1, "... such updates are NOT pre-release scanner updates,...". Applicant's statement above means that the fix sent to a client are part of release and not pre-release is given full faith and credit. Furthermore, on page 2 the Applicant distinguishes the claimed invention over Norton by clarifying that Quarantine is "central Quarantine" and again on page 2 fifth paragraph. Examiner had asserted the fixes produced by Quarantine are pre-release. Applicant emphasis this point in the last sentence of paragraph 2 of page 2, page 3 second paragraph.

Applicant states the testing of Norton is single purpose (security only) in the fourth paragraph. Applicant's argument on page 4 that there is not teaching of modify the pre-release software based on testing is persuasive in view of the Applicant's knowledge that Quarantine is central and does not represent pre-releases that are later placed in the full release. The rejection had asserted with the broadest reasonable interpretation that a lack of another submission (silence) to Quarantine (previous interpreted to be pre-release), would be an indication testing worked. No explicit teaching is present in Norton to detail the updating process of the full release and the Examiner has given full faith and credit to Applicant's arguments for patentability.

The Norton reference is the closest prior art of record. The reference in view Applicant's arguments lack substantial evidentiary support (*Zurko v. Dickenson*) for the limitations indicated above.

The claims are presented below:

Claim 1

A method for testing scanner updates, comprising:

- (a) distributing a full-release scanner update from a server to a plurality of computers utilizing a network;
- (b) distributing a pre-release scanner update from the server to the computers utilizing the network;
- (c) executing the full-release scanner update on the computers for security scanning;
- (d) executing the pre-release scanner update on the computers for testing purposes; and
- (e) transmitting results of the testing from the computers to the server utilizing the network.

Claim 27

A computer program product for testing scanner updates, comprising:

- (a) computer code for distributing a full-release scanner update from a server to a plurality of computers utilizing a network;
- (b) computer code for distributing a pre-release scanner update from the server to the computers utilizing the network;
- (c) computer code for executing the full-release scanner update on the computers for security scanning;
- (d) computer code for executing the pre-release scanner update on the computers for testing purposes; and

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(e) computer code for transmitting results of the testing from the computers to the server utilizing the network.

Claim 28

A system for testing scanner updates, comprising:

- (a) logic for distributing a full-release scanner update from a server to a plurality of computers utilizing a network;
- (b) logic for distributing a pre-release scanner update from the server to the computers utilizing the network;
- (c) logic for executing the full-release scanner update on the computers for security scanning;
- (d) logic for executing the pre-release scanner update on the computers for testing purposes; and
- (e) logic for transmitting results of the testing from the computers to the server utilizing the network.

Claim 29 contains the same limitations of representative claim 1. Claim 29 is for the server side of the overall system.

Claim 29

A server-based method for testing scanner updates, comprising:

- (a) distributing a full-release scanner update from a server to a plurality of computers utilizing a network;
- (b) distributing a pre-release scanner update from the server to the computers utilizing the network;
- (c) receiving results of the execution of the full-release scanner update and the pre-release scanner update from the computers;
- (d) modifying the pre-release scanner update before releasing the pre-release scanner update as a full-release scanner update based on the results.

Claim 30 contains the same limitations of representative claim 1. Claim 30 is for the client side of the overall system.

Claim 30

A client-based method for testing scanner updates, comprising:

- (a) receiving from a server a full-release scanner update at a computer utilizing a network;
- (b) receiving from the server a pre-release scanner update at the computer utilizing the network;
- (c) executing the full-release scanner update on the computer for security scanning;
- (d) executing the pre-release scanner update on the computer for testing purposes; and
- (e) transmitting results of the testing from the computer to the server utilizing the network.

Claim 31 contains all of the limitations from representative claim 1 and additional limitations.

Claim 31

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A method for testing scanner updates, comprising:

- (a) distributing a full-release scanner update from a server to a plurality of computers utilizing a network;
- (b) distributing a pre-release scanner update from the server to the computers simultaneously with the full-release update utilizing the network;
- (c) executing the full-release scanner update on the computers for security scanning;
- (d) determining whether the computers are idle;
- (e) automatically executing the pre-release scanner update on the computers for testing purposes upon the computers being determined to be idle; comparing results of the execution of the full-release scanner update and the pre-release scanner update;
- (g) determining whether a virus is detected by the execution of the pre-release scanner update and not by the full-release scanner update based on the comparison;
- (h) storing a record of the detected virus;
- (i) removing the detected virus;
- (j) detecting faults associated with the execution of the pre-release scanner update;
- (k) ceasing the execution of the pre-release scanner update on the computers in response to the detection of at least one fault;
- (l) re-executing the pre-release scanner update on the computers after ceasing the execution;
- (m) counting a number of the faults;
- (n) conditionally re-executing the pre-release scanner update on the computers if the number exceeds a predetermined number within a predetermined amount of time;
- (o) storing a record of the faults;
- (p) transmitting results relating to the viruses and faults from the computers to the server utilizing the network; and
- (q) modifying the pre-release scanner update at the server before releasing the pre-release scanner update as a full-release scanner update based on the results.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

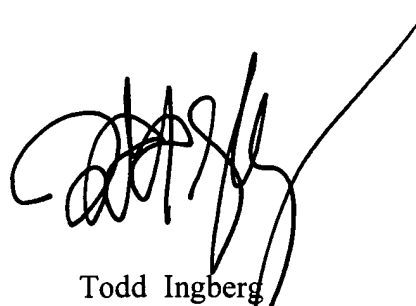
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Correspondence Information

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd Ingberg whose telephone number is (571) 272-3723. The examiner can normally be reached on during the work week..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Todd Ingberg
Primary Examiner
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